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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,294	11/13/2003	Dimitri T. Azar	00633-041001	8876
26161 7590 03/18/2008 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER MATTHEWS, WILLIAM H	
			ART UNIT 3774	PAPER NUMBER
			MAIL DATE 03/18/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,294

Applicant(s)

AZAR, DIMITRI T.

Examiner

William H. Matthews (Howie)

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8-11,13-18,20-23 and 26-28 is/are pending in the application.

4a) Of the above claim(s) 18 is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1,8-11,13-17,20-23 and 26-28 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1,8-11,13-17,20-23, and 26-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1,8-11,13-17,20-23, and 26-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "circuitry coupled to the memory element to enable the wavefront data to be programmed by transmitting data over a wireless link". Claim 27 recites "circuitry for detecting an infrared beam". Examiner finds only a vague description of these limitations at page 5 (lines 21-29), page 7 (lines 21-27), and page 9 (lines 1-6). However, these brief descriptions do not fully support the limitations. Specifically, "circuitry coupled to the memory element", "circuitry enabling wavefront data to be programmed over a wireless link", and "circuitry for detecting an infrared beam" are not adequately supported by the original disclosure.

Claims 8-11, 13-17, 20-23, 26, and 28 are rejected for depending from and including the above described limitations.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9-11, 15-17, 21, 22 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Kern USPN 4601545.

3. Kern disclose in c3:9-49, c4:10-24, c5:14-25, c5:37-65, c6:12-51 an intraocular lens comprising variable refraction optical element 52, memory element (RAM or ROM included in CPU), actuators 71/62/64/73/75 (electrode matrix), controller 54/58 (CPU or gate). The memory element stores instructions for controlling the lens (c3:20-23), and Kern disclose controlling index of refraction at discrete points (c4:10-24) and creating an aspheric lens effect (c5:45-47) which reduce high-order, or spherical, aberration.

Regarding lines 9-10 of claim 1, Kern describe circuitry which enable wireless transmission of data to CPU (c6:22-27).

Regarding claim 10, Figure 1 and 5D show a plurality of individually addressable electrodes controlled by parallel signals.

Regarding claims 15-17 and 27, the limitations recited are of intended use (see MPEP 2114) and do not add structural limitations to the optical element. The Kern prosthesis is capable of use in any chamber or lens bag of any patient.

Regarding claim 22, the memory element may be rewritable RAM such that the optical element is modifiable by wireless transmission.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8,13,14,23, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kern USPN 4601545 as applied to claims 1,9-11,15-17,21-22,27 above, and further in view of Rizzo, III USPN 5800530.

Kern meet the structural limitations of claims 8,13,14,23 and 28 as described above but lack the express written disclosure of including a rangefinder. Rizzo, III teach in figure 1, c2:15-56, and c3:40-49 an intraocular lens comprising variable focus lens controlled by an actuator and CPU which receive signals from a rangefinder 24 in order to provide accurate distance estimates to determine proper accommodation levels.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the intraocular lens system disclosed by Kern '545 to include a rangefinder in communication with a CPU, as taught by Rizzo, III '530, in order provide accurate distance estimates to determine proper accommodation levels.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kern USPN 4601545 as applied to claims 1,9-11,15-17,21-22,24-25 above, and further in view of Sandsted et al. USPN 6749632.

It is noted that claim 20 recites a product by process limitation (see MPEP 2113). However, in view of the structure implied by a unique measurement, Kern lack the express written disclosure of the instructions stored in the memory device being based on wavefront measurement performed on a patient. Sandsted et al. teach, in c4:23-67, adjusting an intraocular lens profile in accordance with wavefront data measured on a patient in order to accurately correct for high-order aberrations specific to said patient.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the intraocular lens system disclosed by Kern '545 to include data based on a measurement performed on a patient, as taught by Sandsted et al. '632, in order to accurately correct for high-order aberrations specific to said patient.

7. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kern USPN 4601545 as applied to claims 1,9-11,15-17,21-22,27 above, and further in view of Nelson et al. US PN 7127299.

Kern meet the structural limitations of claim 26 as described above but lack the express written disclosure of the wireless transmission being encrypted. Nelson et al. teach in lines 33-42 of column 4 providing encryption to wireless control signals for implanted medical devices in order to provide security and safety.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the intraocular lens system disclosed by Kern '545 to include

encrypted wireless control signals, as taught by Nelson et al., in order provide security and safety.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William H. Matthews/
Primary Examiner